UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

PEDRO GONZALEZ GUARCAS

Petitioner,

v.

CHAD WOLF, Acting Secretary of Department of Homeland Security;

MARCOS CHARLES, Immigration and Customs Enforcement, Enforcement and Removal Operations, Acting Field Office Director;

CHRISTOPHER BRACKETT, Superintendent of the Strafford County Department of Corrections

Respondents.

Case No.: _____

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241
(*EMERGENCY HEARING REQUESTED*)[1]

INTRODUCTION

Petitioner Pedro Gonzalez Guarcas ("Petitioner" or "Mr. Gonzalez Guarcas")—a 27-year-old K'iche' Mayan asylum seeker from Guatemala—brings this emergency petition for a writ of habeas corpus to challenge his detention without a bond hearing. Unless this Court intervenes, he will remain detained through his immigration proceedings without any opportunity

[1] A separate motion for expedited consideration in light of the COVID-19 virus pandemic is forthcoming.

to have an immigration judge determine whether he poses a flight risk or a danger warranting his continued detention.

Mr. Gonzalez Guarcas was removed from the United States in November 2009. Notwithstanding his efforts to survive in Guatemala, he was persecuted based on his ethnicity/race (K'iche' Mayan), his membership in a targeted Mayan family and political opinion. Thus, he re-entered the United States without inspection in 2010 and settled in Massachusetts. On or about February 28, 2020, the government detained Mr. Gonzalez Guarcas based on his prior removal order. Because Mr. Gonzalez Guarcas demonstrated a reasonable fear of persecution and torture in Guatemala, he was placed into so-called "withholding-only" proceedings. In such proceedings, an immigration judge determines whether he qualifies for withholding of removal, which is a form of protection that would bar the government from deporting him to Guatemala. *See Garcia v. Sessions*, 856 F.3d 27, 33 (1st Cir. 2017).

Federal Respondents ("the government") have maintained that noncitizens in these "withholding-only" proceedings are subject to the post-final-order detention statute, 8 U.S.C. § 1231(a), and may be detained without a bond hearing through these proceedings. That interpretation is incorrect. Mr. Gonzalez Guarcas's custody is governed by 8 U.S.C. § 1226(a) (pre-order detention), and thus he is entitled to a bond hearing because he is being held "pending a decision on whether [he] is to be removed from the United States" within the meaning of that statute. *See* 8 U.S.C. § 1226(a). There is a circuit split on this important question of statutory interpretation, and the First Circuit has not addressed this issue. *Compare Chavez v. Hott*, 940 F.3d 867, 869 (4th Cir. 2019) (8 U.S.C. § 1226 governs the detention of withholding-only proceedings "because a decision on removal remains 'pending' until their withholding-only proceedings are complete."); *Guerra v. Shanahan*, 831 F.3d 59 (2d Cir. 2016) (same) *with*

Guerrero-Sanchez v. Warden York Cty. Prison¸905 F.3d 208 (3d Cir. 2018) (8 U.S.C. § 1231 applies); *Padilla-Ramirez v. Bible*, 882 F.3d 826 (9th Cir. 2017) (same). The Second and Fourth Circuits are correct, and Section 1226(a) applies here. Moreover, it should be noted that this identical legal question is currently before Judge Joseph A. DiClerico, Jr. in *Rivera-Medrano v. U.S. Department of Homeland Security*, No. 1:20-cv-00194-JD (D.N.H. filed Feb. 3, 2020). A decision is expected imminently.

Accordingly, Mr. Gonzalez Guarcas asks for an immediate bond hearing. Further, in light of the COVID-19 virus outbreak, Mr. Gonzalez Guarcas asks for expedited consideration of the instant habeas.

Petitioner further alleges as follows:

PARTIES

1. Petitioner Pedro Gonzalez Guarcas was detained by the government on or about February 28, 2020. He remains in immigration custody at the Strafford County Department of Corrections in Dover, New Hampshire.

2. Respondent Chad Wolf is the Acting Secretary of the United States Department of Homeland Security. He is sued in his official capacity.

3. Respondent Marcos Charles is the Acting Field Office Director of Immigration and Customs Enforcement (ICE), Enforcement and Removal Operation, of Boston Field Office. He is sued in his official capacity.

4. Respondent Christopher Brackett is the Superintendent of the Strafford County Department of Corrections and is Petitioner's immediate custodian. He is sued in his official capacity.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 1331, 2241 (habeas corpus) and Article I, Section 9, Clause 2 of the U.S. Constitution ("Suspension Clause").

6. The federal district courts have jurisdiction to hear habeas claims by noncitizens contesting the lawfulness of their immigration detention. *Aguilar v. Immigration & Customs Enforcement Div. of the Dep't of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007).

7. Venue is proper in the District of New Hampshire because Petitioner is currently detained at the Strafford County Department of Corrections in Dover, New Hampshire, in the territorial jurisdiction of this Court. 28 U.S.C. § 1391. *Vasquez v. Reno*, 233 F. 3d 688, 696 (1st Cir. 2000).

FACTS

8. Mr. Gonzalez Guarcas is an asylum seeker from Guatemala. He was born during the Guatemalan Civil War in 1992. He has strong ties to Massachusetts since 2010, where his family resides.

9. Mr. Gonzalez Cuarcas comes from an indigenous family that was targeted for genocide during the Guatemalan Civil War because of the family's leadership in protecting their Mayan community from the Guatemalan government. Mr. Gonzalez Guarcas suffered great harm in addition to his asylum claims, including almost ten years of severe respiratory problems (bronchitis and constant dry coughing).

10. His sister and younger brother in Massachusetts were both granted asylum based on persecution for being a member of the targeted indigenous Mayan community. They are now lawful permanent residents of the United States.

11. Mr. Gonzalez Guarcas first entered the United States in 2009 and was deported. At that time, no asylum request was made (possibly due to the availability of K'iche' interpreter issues).

12. Upon removal to his country, he tried to survive. However, the persecution was so severe that he decided to leave for the United States again in 2010. He fled his country because of his K'iche' Mayan ethnicity. *See* Exhibit 1 (Reasonable Fear Interview Package).

13. Significantly, Mr. Gonzalez Guarcas's brother and sister were granted asylum because of their K'iche' Mayan ethnicity. *See* Exhibit 2 (Asylum Information Related To Petitioner's Brother and Sister). Because of Mr. Gonzalez Guarcas's ethnicity, he suffered persecution to the extent that he was attacked by non-indigenous people. He still has scars on his back caused by this attack.

14. Mr. Gonzalez Guarcas has been residing in Massachusetts ever since.

15. Since returning to the United States, Mr. Gonzalez Guarcas has devoted himself to the Mayan community in Massachusetts. This includes his active participation in the Organizacion Maya K'iche'—an integral Mayan organization that was founded in the early 1990s. He is also active in his Evangelical Church. Further, he has been employed in the fishing industry since his return.

16. In early 2020, Mr. Gonzalez Guarcas was pulled over and charged with driving without a license.

17. The government served Mr. Gonzalez Guarcas with a notice of intent to reinstate his previous removal order.

18. Mr. Gonzalez Guarcas expressed a fear of returning to Guatemala and underwent a reasonable fear interview with an asylum officer pursuant to 8 C.F.R. § 208.31. After hearing

testimony, the asylum officer determined on March 19, 2020, that Mr. Gonzalez Cuarcas established a reasonable fear of torture.

19. Following the positive reasonable fear determination, the government placed him in withholding-only proceedings to determine whether he qualified for statutory withholding of removal and protection under the Convention Against Torture ("CAT").

20. His first master calendar (preliminary) hearing has been scheduled for April 7, 2020.

21. Separately, Mr. Gonzalez Cuarcas submitted his request to be released on parole to the government in light of the COVID-19 virus pandemic. The government has not responded to the request yet. *See* Exhibit 3 (Request for Release Letter).

LEGAL BACKGROUND
(Detention During Withholding-Only Proceedings)

Detention under 8 U.S.C. §§ 1226 and 1231

22. The Immigration and Nationality Act generally provides two sources of detention authority: the detention of individuals whose immigration proceedings are pending is governed by 8 U.S.C. § 1226, while that of noncitizens whose legal process has concluded in a final order of removal that merely awaits execution is governed by 8 U.S.C. § 1231.

23. Section 1226 authorizes the detention of a noncitizen "pending a decision on whether [the noncitizen] is to be removed from the United States."

24. Unless subject to mandatory detention provisions not at issue here, a noncitizen detained under Section 1226 may be released on bond or on conditions and is entitled to a bond hearing before an Immigration Judge.

25. By contrast, Section 1231 applies to the detention of noncitizens whose immigration proceedings have concluded. The first statutory basis for noncitizens' detention after the administrative final order of removal is 8 U.S.C. § 1231(a)(2). It provides that, "[d]uring the [90-day] removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found . . . deportable under section 1227(a)(2) or 1227(a)(4)(B) . . . ." 8 U.S.C. § 1231(a)(2). The 90-day removal period begins on the latest of the following:

> (i) The date the order of removal becomes administratively final.
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B).

26. The second statutory basis for post-removal detention beyond the removal is 8 U.S.C. § 1231(a)(6). Noncitizens "removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) . . . may be detained beyond the removal period . . . ." 8 U.S.C. § 1231(a)(6).

27. In interpreting Section 1231, in *Zadvydas v. Davis*, the Supreme Court held that noncitizens whom the government detains pursuant to an order of removal are entitled to freedom from excessive detention. 533 U.S. 678, 690-96 (2001).

28. The *Zadvydas* Court set a "presumptively reasonable period of detention" of six months. *Id*. at 699-701. Further, the Supreme Court instructed that in reviewing prolonged detention after six months, "if removal is not reasonably foreseeable, the [habeas] court should hold continued detention unreasonable." *Id*. at 701.

Reinstatement of removal and withholding-only proceedings

29. Title 8, § 1231(a)(5) instructs the government to "reinstate" the removal order of anyone who is found to have re-entered the country illegally after being removed. Persons subject to reinstatement of removal cannot appear before an Immigration Judge; instead, they are removed summarily upon their previous removal order, which is "reinstated from its original date." *Id.*; 8 C.F.R. § 241.8(a).

30. However, there is an exception: a noncitizen who expresses fear of being persecuted or tortured if returned to his home country must be interviewed by an asylum officer to determine if he has a "reasonable fear" of persecution or torture in that country. *Id*. at § 241.8(e). If the officer finds a reasonable fear, the noncitizen is referred to an IJ for proceedings to determine whether he qualifies for "withholding of removal"—a form of protection from removal to a specific country in which an individual will suffer persecution or torture. *See* 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 208.16, 208.31(e); *see also* 8 C.F.R. § 1208.2(c)(3)(i). The proceedings are limited in scope to applications for withholding of removal, but are otherwise conducted following the same procedures that apply in removal proceedings. C.F.R. § 208.31(e).

31. Following these "withholding-only" proceedings, an Immigration Judge's decision on a noncitizen's application for withholding of removal may be appealed to the BIA by the noncitizen or by the government.

32. A noncitizen whose application for withholding of removal is denied by the BIA may then petition for review of the decision to the relevant court of appeals. A petition for review must always be filed within 30 days of "the date of the final order of removal." 8 U.S.C. §1252(b)(1). In the case of a noncitizen in "withholding-only" proceedings whose application

for withholding of removal is denied by the BIA, courts that have examined the question agree that the removal order becomes final on the date that the BIA renders its decision denying the application for withholding of removal, and a petition for review is timely if filed within 30 days of that date. *See, e.g., Ortiz-Alfaro v. Holder*, 694 F.3d 955, 960 (9th Cir. 2012); *see also Garcia v. Session*, 856 F.3d 27, 35 (1st Cir. 2017). A noncitizen pending withholding-only proceedings, therefore, does not yet have a ***final*** order of removal that can be judicially reviewed.

ARGUMENT

I. 8 U.S.C. § 1226(a) Governs Petitioner's Detention

33. Here, Mr. Gonzalez Guarcas's detention during his withholding-only proceedings is governed by 8 U.S.C. § 1226, not § 1231. Thus, he is entitled to an individualized bond hearing. There is a circuit split on this important question of statutory interpretation, and the First Circuit has not addressed this issue. *compare Guerra v. Shanahan*¸ 831 F.3d 59 (2d Cir. 2016) (holding a noncitizen in withholding-only proceedings was entitled to a bond hearing because his detention is governed by 8 U.S.C. § 1226); *Chavez v. Barr*, 940 F.3d 867, 869 (4th Cir. 2019) (same) *with Padilla-Ramirez v. Bible*, 862 F.3d 881 (9th Cir. 2017) (acknowledging noncitizen in withholding-only proceedings did not have a final order of removal for purposes of time-limit to seek judicial review but holding 8 U.S.C. § 1231 nevertheless governed detention); *Guerrero-Sanchez v. Warden York Cty. Prison*¸ 905 F.3d 208 (3d Cir. 2018) (same); *De Souza Neto v. Smith*, 272 F. Supp. 3d 228 (D. Mass. 2017) (Stearns, J.), *appeal voluntarily dismissed by the petitioner*, No. 17-2031 (1st Cir. Dec. 14, 2017).

34. Although the government notified Mr. Gonzalez Guarcas of its intent to reinstate his prior order of removal to Guatemala, he is now in proceedings to determine whether he may, in fact, be removed under that order. Mr. Gonzalez Guaracs is thus detained "pending a decision

on whether [he] is to be removed from the United States," under Section 1226(a), not pursuant to an "administrative final" order of removal, under Section 1231(a). *See* 8 U.S.C. § 1101(a)(47)(B) (removal order is not final until both the Immigration Judge and the BIA complete review).

II. 8 U.S.C. § 1231(a)(5) Which Governs Reinstatement Of Prior Removal Order Provides No Detention Authority.

35. 8 U.S.C. § 1231(a)(5), which governs reinstatement of a prior removal, provides no detention authority. Section 1231(a)(5) does not mention withholding-only proceedings, much less provide for detention during the pendency of these proceedings. Congress supplied detention authority in several sections of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. §§ 1225(b) (mandatory detention for arriving alien), 1226(a) (discretionary detention for non-criminal alien), 1226(c) (mandatory detention for criminal alien), 1226a (mandatory detention for suspected terrorists), 1231(a)(2) (mandatory detention for the 90-day removal period), 1231(a)(6) (discretionary detention after the removal period), 1536 (custody and release for terrorist alien). Yet Congress did not do so in Section 1231(a)(5). *See Uttecht v. Napolitano*, No. 8:12CV347, 2012 U.S. Dist. LEXIS 156654 (D. Neb. Nov. 1, 2012) ("[W]hile § 1231(a)(5) pertains to the reinstatement of Uttecht's prior removal order, the language of that provision does not authorize her detention.").

36. Moreover, regulations related to Section 1231 detention "do not actually specify which section - § 1226 or § 1231 – authorizes detention of noncitizens subject to reinstated removal orders who have been placed in withholding-only proceedings." *Chavez*, 940 F.3d at 882 (rejecting the government's *Chevron* deference argument); *Guerra*, 831 F.3d at 63 (same); *Guerrero-Sanchez*, 905 F.3d at 215 (same); *Padilla-Ramirez v. Bible*, 882 F.3d 826, 831 (9th Cir. 2017) (same); *see also* 8 C.F.R. §§ 241.4 (providing custody review procedures under

Section 1231(a)(6)); 241.5 (governing release after expiration of 90-day removal period). Thus, Section 1231(a)(5) does not control the governing detention authority.

III. The Dispositive Question Is When The Removal Period Begins.

37. The dispositive question to determine which detention authority governs Petitioner's detention is *when* the removal period under 8 U.S.C. § 1231(a)(1)(B) begins for which the government has *the authority* to remove Mr. Gonzalez Cuarcas. *Chavez*, 940 F.3d at 876 (concluding that the 90-day removal period "does not begin until the government has the actual legal authority to remove a noncitizen from the country."). The text and structure of Section 1231(a) make clear that it applies *after* a decision on a noncitizen's removal has been made, when all that is left to do is *execute* removal. Section 1231 generally applies after an *administrative final* order—that is, an order that has been affirmed by the Board of Immigration Appeals ("BIA") or for which the time to file an appeal to the BIA has expired, *see* 8 U.S.C. § 1101(a)(47)(B)—or after the conclusion of judicial review. 8 U.S.C. § 1231(a)(1)(B)(ii).

38. The statutory context further demonstrates that Section 1231(a) does not apply to noncitizens in withholding-only proceedings. Noncitizens subject to Section 1231(a) "shall" be removed within a 90-day "removal period," during which they "shall" be detained. *Id*. § 1231(a)(1) and (2). The purpose of the mandatory 90-day removal period under Section 1231(a)(1)-(2) is to make arrangements (such as obtaining a travel document) to "execute a removal order." *Diouf v. Mukasey*, 542 F.3d 1222, 1231 (9th Cir. 2008). "[I]t is obvious that withholding-only proceedings take substantially longer than 90 days." *Chavez*, 940 F.3d at 877. Hence, it would be absurd to apply this removal period to noncitizens whose withholding-only proceedings are pending before the Immigration Judge and/or the BIA. Congress clearly intended Section 1231(a) to apply to individuals whose removal orders are *ready* to be executed.

In a nutshell, Section 1231(a) begins when legal proceedings are complete, and an order of removal can be executed. Here, it is not disputed that the government has no authority to remove Mr. Gonzalez Guarcas until the completion of his withholding-only proceedings.

39. The case law addressing the ***finality*** of a reinstatement order of removal further supports Petitioner's position. The courts of appeals possess statutory jurisdiction to review ***final*** orders of removal. 8 U.S.C. § 1252(a)(1); *O'Riordan v. Barr*, 925 F.3d 6, 10 (1st Cir. 2019). This finality rule applies to a reinstated removal order. *See Lattab v. Ashcroft*, 384 F.3d 8, 14 (1st Cir. 2004) ("Because an order reinstating a prior removal order is the functional equivalent of a final order of removal, we have jurisdiction to hear and determine these contentions under 8 U.S.C. § 1252.") (citation omitted) (internal quotation marks omitted); *Arevalo v. Ashcroft*, 344 F.3d 1, 9 (1st Cir. 2003) ("There is little doubt that we have appellate jurisdiction over the reinstatement of an order to deport an illegal reentrant. The reinstatement itself operates as the functional equivalent of a final order of removal."). Thus, a noncitizen must file a petition for review in 30 days pursuant to 8 U.S.C. § 1252(b)(1) from the date that the government signed the decision to reinstate a prior removal order. *Ponta-Garca v. Ashcroft*, 386 F.3d 341, 342-43 (1st Cir. 2004). In short, a reinstated order of removal can be qualified as an administrative final order if there are no further legal impediments to the execution of the order.

40. However, there is an exception to this finality of a reinstated removal order: a noncitizen who expresses fear of being persecuted or tortured if returned to his home country must be interviewed by an asylum officer to determine if he has a "reasonable fear" of persecution or torture in that country. *See* 8 C.F.R. § 241.8(e). If the officer finds a reasonable fear, the noncitizen is referred to an Immigration Judge for proceedings to determine whether he qualifies for "withholding of removal"—a form of protection from removal to a specific country

in which an individual will suffer persecution or torture. *See* 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 208.16, 208.31(e); *see also* 8 C.F.R. § 1208.2(c)(3)(i). These "withholding-only" proceedings are conducted in the same manner as ordinary removal proceedings, except that the Immigration Judge is limited to deciding the application for statutory withholding of removal and protection under the CAT. *See* 8 C.F.R. § 208.31(e).

41. During the pendency of these "withholding-only" proceedings, the reinstated removal order does not become ***final*** until "all of the administrative proceedings have concluded." *Padilla-Ramirez*, 882 F.3d at 834; *Jimenez-Morales v. U.S. Att'y Gen.*, 821 F.3d 1307, 1308 (11th Cir. 2016) (the removal order is not final until the completion of reasonable fear or withholding-only proceedings); *Ponce-Osorio v. Johnson*, 824 F.3d 502, 506 (5th Cir. 2016) (same); *Luna-Garcia v. Holder*, 777 F.3d 1182, 1186 (10th Cir. 2015) (same); *Ortiz-Alfaro v. Holder*, 694 F.3d 955, 958 (9th Cir. 2012) (same). Put another way, the 30-day deadline for filing a petition for review does not run from the date that the government reinstated a prior removal order. Instead, the deadline starts from the date that withholding-only proceedings concluded before the BIA. *See also Cano-Saldarriaga v. Holder*, 729 F.3d 25, 27 (1st Cir. 2013) ("[a] final order is not limited to a determination of removability, ***but includes all matters on which the validity of the final order is contingent***.") (quoting *Immigration & Naturalization Serv. v. Chadha*, 462 U.S. 919, 938 (1983)) (internal quotation marks omitted) (emphasis added).

42. The Second and Fourth Circuits observed that, because the reinstated removal order is ***not final*** until the completion of the entire proceedings for judicial review under 8 U.S.C. § 1252, the same meaning of ***finality*** should apply to the 90-day removal period under 8 U.S.C. §

1231. *See Chavez*, 940 F.3d at 880-81; *Guerra*, 831 F.3d at 63. The Fourth Circuit further explained:

> The government does not dispute that a removal order is "final" under § 1252's judicial review provisions only when withholding-only proceedings end. Instead, it argues that we should adopt a "bifurcated definition of finality," *Guerra*, 831 F.3d at 63, under which a reinstated removal order is simultaneously final for purposes of detention under § 1231 and not final for purposes of judicial review under § 1252. The district court, like the Second Circuit, *see id*., rejected that proposal, and so do we. It is possible, of course, for the same word – here, "final" – to mean two different things in two different parts of this statute; context matters, and not all the arguments that support the case law on finality under § 1252 translate directly to § 1231. *See Padilla-Ramirez*, 882 F.3d at 833-34 (adopting government's bifurcated definition of "finality"). But the presumption is that finality should mean the same thing in both these provisions, *see Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 595, 124 S. Ct. 1236, 157 L. Ed. 2d 1094 (2004), making for a far more workable statutory structure. And as described above, we find no clear indication that Congress intended § 1231 to apply while withholding-only proceedings remain pending; indeed, we think the better reading is that § 1226 governs such cases. *Cf. id.* (explaining that presumption of same meaning "yields" to indications of contrary congressional intent (internal quotation marks omitted)). Without some compelling reason to do so, we decline to graft a two-tiered system of finality onto immigration cases involving withholding-only proceedings. *See Guerra*, 831 F.3d at 63 (because noncitizens with pending withholding-only proceedings clearly fall under § 1226 and not § 1231, court "need not create new principles parsing administrative finality").

Chavez, 940 F.3d at 880-81.

IV. The Statutory Text and Structure Make Clear That 8 U.S.C. § 1226(a) Applies.

43. The text and structure of the INA make plain that Mr. Gonzalez Guarcas's detention is governed by Section 1226(a). Section 1226(a) applies broadly to detention "pending a decision on whether the alien is to be removed from the United States." By its plain terms, Section 1226 applies to Mr. Gonzalez Guarcas because the "decision" as to "whether [he] is to

be removed from the United States" is based on the outcome of his withholding-only proceedings.

44. The purpose of these proceedings is to determine whether he will be removed from the United States. The application of Section 1226(a) is not limited to determinations in regular removal proceedings under 8 U.S.C. § 1229a, but applies any time a decision on whether a noncitizen "is to be removed" is pending. Until the government has the ***actual*** authority to remove Mr. Gonzalez Guarcas (which is when the reinstated removal becomes final), he is literally detained "pending a decision on whether [he] is to be removed from the United States." 8 U.S.C. § 1226(a). Thus, the Court should find that Mr. Gonzalez Guarcas is detained under Section 1226(a), "pending a decision on whether [he] is to be removed from the United States." 8 U.S.C. § 1226(a). Accordingly, he is entitled to a bond hearing, as he is not subject to mandatory detention.

CLAIMS FOR RELIEF

COUNT 1
THE IMMIGRATION AND NATIONALITY ACT

45. The foregoing allegations are realleged and incorporated herein.

46. Noncitizens detained under 8 U.S.C. § 1226(a) are entitled to an individualized bond hearing to determine whether they pose a flight risk or danger warranting further detention.

47. Because Petitioner is detained under Section 1226(a) and he has not had an individualized bond hearing, his detention violates Section 1226(a).

PRAYER FOR RELIEF

Petitioner asks that this Court grant the following relief:

(1). Assume jurisdiction over this matter;

(2). On an emergency basis, declare that Petitioner's detention during his withholding-only proceedings is governed by 8 U.S.C. § 1226(a);

(3). Enjoin Respondents from transferring Petitioner from New Hampshire during the pendency of this petition;

(4). Award attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. §504, if applicable; and

(5). Order any further relief this Court deems just and proper.

Respectfully submitted this 3rd day of April 2020.

PEDRO GONZALEZ GUARCAS,

By and through his Counsel,

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* Motion for *Pro Hac Vice* is forthcoming.